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CHARLES ELMORE CRO

IN THE

Supreme Court of the United States

No. 342

MADISON L. MILLER, JR.,
Petitioner

vs.

THE UNITED STATES OF AMERICA,
Respondent

MOTION
and
ARGUMENT

of JAMES A. DRAIN, *National Judge Advocate,*
American Legion—AMICUS CURIAE

W. F. ROBERTS CO. WASHINGTON D. C.

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Comes now James A. Drain, a member of the Bar of this Court, and files this motion and argument as amicus curiae in the above entitled and numbered cause, which was decided by this Court on March 4, 1935, and in which Petitioner has filed a motion for rehearing now pending before the Court.

The occasion and reason for the undersigned desiring to appear herein as amicus curiae is that he is National Judge Advocate of the American Legion, a national organization composed of World War veterans and existing by virtue of a corporate charter authorized by an Act of Congress.

Ever since its organization immediately following the cessation of hostilities in 1918, the American Legion has consistently urged veterans to convert and maintain in force insurance contracts issued to them by the United States, all of which contain the insuring provisions brought into question in the present suit. The American Legion has been concerned not only with the benefits thought to accrue to the veterans generally from such insurance, but also realized that in order to avoid large losses to the United States which would inevitably follow otherwise, it was necessary to encourage the maintaining of such insurance in force by a large number of eligible risks who were in first class condition and presumably would remain so for some years. Otherwise, the Government may be left with insurance on none but subnormal risks. The American Legion has cooperated with the Government in this respect to the extent of distributing large amount of literature and much personal solicitation of applications for said insurance, and without cost to the Government or the insured. Notwithstanding it is well known that practically all of the first year's premium and a substantial percentage of the premium for subsequent years is consumed in commercial insurance by commissions and other acquisition expense the Government has never incurred such acquisition expense.

Necessarily, the American Legion keenly feels its responsibility in having urged the veterans to apply for and maintain this insurance in effect and believes that a grave injustice will necessarily be done those who have so maintained their insurance over a long period of years if the Court's original opinion in this case is not withdrawn or its scope materially limited. The

seriousness of the situation is emphasized because in the years that have passed many of these policyholders have become bad insurance risks. In reliance on the Government contract they obtained, they have refrained from obtaining similar insurance coverage from private corporations at least to the extent of their assumed Government coverage.

If the Court adheres to the views announced in the opinion in this case, there is no assurance that at a still later date some other provisions of the policy may not be invalidated. These men have contracted with their Government in reliance on what was thought a well settled rule of construction, to-wit: that long continued administrative construction and administrative action under a statute will be adhered to whenever the same is called in question in any court. If we are to depart from that principle now, the results will indeed be serious; so serious that the loss of this particular suit by Madison L. Miller, Jr., however important it is to him will become an insignificant detail as compared to the mischief which will thereby be wrought, and the doubt and uncertainty which will thereby be created in connection with the vast and increasing number of transactions of every character between the citizen and the numerous administrative officers of the Government.

The limited time available does not permit preparation and printing of an extensive separate argument.

Opportunity has been afforded the writer to collaborate in Petitioner's motion for rehearing in this cause and all of the points and arguments contained therein are hereby adopted and most earnestly urged upon this court as a part of this motion and argument.

It is, therefore, respectfully insisted that a reexamination of the logic, the authorities and the evil which necessarily will follow from the original views announced herein must and will lead this Court to withdraw its original opinion herein and adhere to the hitherto well settled doctrines indicated in said motion for rehearing. Such action is most respectfully urged.

JAMES A. DRAIN,
National Judge Advocate
The American Legion.